

**Letter of Findings Number: 02-20130313P  
Tax Administration  
For Tax Year 2012**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

**ISSUE**

**I. Tax Administration—Penalty.**

**Authority:** IC § 6-8.1-5-1; IC § 6-3-4-4.1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests proposed penalty assessment.

**STATEMENT OF FACTS**

Taxpayer, a corporation, was assessed a penalty for underpayment of quarterly estimated income tax. Taxpayer protests the proposed penalty assessment. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

**I. Tax Administration—Penalty.**

**DISCUSSION**

The Indiana Department of Revenue ("Department") issued a proposed penalty assessment for Taxpayer's failure to remit payment for Indiana quarterly estimated income tax. Taxpayer protests the imposition of penalty. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The Department refers to IC § 6-3-4-4.1, which states in part:

(d) The penalty prescribed by [IC 6-8.1-10-2.1](#)(b) shall be assessed by the department on corporations failing to make payments as required in subsection (c) or (f). However, no penalty shall be assessed as to any estimated payments of adjusted gross income tax which equal or exceed:

(1) the annualized income installment calculated under subsection (c); or

(2) twenty-five percent (25[percent]) of the final tax liability for the taxpayer's previous taxable year.

In addition, the penalty as to any underpayment of tax on an estimated return shall only be assessed on the difference between the actual amount paid by the corporation on such estimated return and twenty-five percent (25[percent]) of the corporation's final adjusted gross income tax liability for such taxable year.

IC § 6-8.1-10-2.1 states in relevant part:

(b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10[percent]) of:

(1) the full amount of the tax due if the person failed to file the return;

(2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;

(3) the amount of the tax held in trust that is not timely remitted;

(4) the amount of deficiency as finally determined by the department; or

(5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

Next, the Department refers to [45 IAC 15-11-2](#)(b), which states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a

taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Finally, [45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

Taxpayer in its protest letter states in part:

On September 14, 2012 . . . we filed the estimated payment, scheduled the payment for September 17, 2012 and received the Payment Locator Number []. We printed the number for our records and accidentally we did not complete the transaction.

Taxpayer states that upon finding the error, Taxpayer corrected it "by finishing the filing and payment all the way to the page stating that the payment was successful."

Taxpayer's argument and documentation has established that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#).

#### **FINDING**

Taxpayer's protest is sustained.

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